

2013 DRAFTING REQUEST

Assembly Amendment (AA-AB40)

Received: **5/31/2013** Received By: **gmalaise**
Wanted: **As time permits** Same as LRB:
For: **Legislative Fiscal Bureau 6-3847** By/Representing: **Swissdorf**
May Contact: Drafter: **gmalaise**
Subject: **Children - miscellaneous** Addl. Drafters:
Health - miscellaneous Extra Copies:

Submit via email: **YES**
Requester's email: **Legislative Fiscal Bureau**
Carbon copy (CC) to:

Pre Topic:

LFB:.....Swissdorf -

Topic:

Confidential exchange of child welfare and health care records

Instructions:

See attached--LFB Motion #530

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 5/31/2013	kfollett 5/31/2013	rschluet 5/31/2013	_____			
/1	gmalaise 6/7/2013			_____	mbarman 6/3/2013		
/2		jdye 6/7/2013	phenry 6/7/2013	_____	mbarman 6/7/2013		

FE Sent For:

<END>

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/?	gmalaise 5/31/2013	kfollett 5/31/2013	rschluet 5/31/2013	_____			
/1		<i>2 CO / 7 JLD</i>	<i>6/1 ph</i>	_____	mbarman 6/3/2013		

FE Sent For:

<END>

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/? gmalaise

11/25/5/31/53113

==

FE Sent For:

<END>

Malaise, Gordon

From: Swissdorf, Kim
Sent: Thursday, May 30, 2013 1:11 PM
To: Malaise, Gordon
Subject: Finance

Here's what happened:

Paper #187, Alternatives A1, B3, B5, C1, and D2 (looks like the only changes to Gov are B5 and D2).

Paper #189, Alternatives 1 and 5a. 5a would change kinship care payments to be the same as level one foster care under the bill.

Paper #191, Alternatives A1 and B1. Alternative A1 involves the errata (don't forget to change 48.931(3)(c)5r, too)

2 motions: #532 for the IEP extension and #530 for the confidential information exchange. They're not accessible to me yet, so I'll have the administrative staff forward them to you.

Thanks much!

Kim Swissdorf
Fiscal Analyst
Legislative Fiscal Bureau
1 East Main Street, Suite 301
Madison, WI 53701
(608) 266-3847
Kim.Swissdorf@legis.wisconsin.gov

CHILDREN AND FAMILIES -- CHILDREN AND FAMILIES

Exchange of Child Welfare and Health Care Records

02

Motion:

Move to authorize the confidential exchange of child welfare records between the Department of Children and Families (DCF), the Department of Corrections (DOC), a county department, or a licensed child welfare agency under contract with DCF and a health care provider. Specify that with respect to these records, the health care provider is subject to the same confidentiality requirements that apply to patient health care records. Include a health care provider in the list of authorized persons to whom child welfare reports and records may be disclosed for purposes of diagnosis and treatment.

48.70

15.981

In addition, authorize the release of mental health treatment records of a child or juvenile without informed written consent to DCF, a county department, or licensed child welfare agency under contract with DCF for purposes of investigating reports of suspected or threatened child abuse or neglect and authorize the treatment record holder to release the treatment record information to DCF, a county department, or licensed child welfare agency under contract with DCF without first receiving a request for release of the treatment record.

51.30

Also, require patient health care records to be released upon request without informed consent to a foster parent or the operator of a group home, residential care center for children and youth, or juvenile correctional facility if the child or juvenile has been placed in the foster home, group home, residential care center or juvenile correctional facility.

146.82

Finally, require patient health care records to be released upon request without informed consent for purposes of preparation for, and hearings related to, termination of parental rights to DCF, a county department, a licensed child welfare agency under contract with DCF, a sheriff or police department, or a district attorney.

Note:

Under current law, the confidential exchange of child welfare records between DCF, DOC, a county department, or a licensed child welfare agency under contract with DCF and another social welfare agency, a law enforcement agency, or a public or private school is permitted. This motion would expand the permissible confidential exchange of child welfare records to those between DCF, DOC, a county department, or a licensed child welfare agency and a health care provider.

Current law allows mental health treatment records of children or juveniles to be released to a county department for purposes of investigating suspected or threatened child abuse or neglect, but does not permit those records to be released to DCF or to a licensed child welfare agency under contract with DCF. This motion would allow the mental health treatment records to be released to DCF, a county department, or a licensed child welfare agency under contract with DCF.

Under current law, health care records of a child or juvenile placed in a foster home, group home, residential care center, or juvenile correctional facility may be provided to the agency that placed the child or that arranged for the placement of the child in the foster home, group home, residential care center, or juvenile correctional facility in which the child is placed. In addition, the agency, in turn, may release those records to the child's foster parent or the operator of the group home, residential care center, or juvenile correctional facility in which the child is placed. This motion would authorize a health care provider to release the records directly to the child's foster parent or to the operator of the group home, residential care center, or juvenile correctional facility in which the child is placed.

Current law allows child abuse and neglect reports and records to be disclosed to an attending physician for purposes of diagnosis and treatment. The motion would expand this disclosure to any health care provider for purposes of diagnosis and treatment.

Finally, current law allows health care records be disclosed to a county department, a sheriff or police department, or a district attorney for purposes of investigation of threatened or suspected child abuse or neglect or suspected unborn child abuse or for purposes of prosecution of alleged child abuse or neglect if the person conducting the investigation or prosecution identifies the subject of record by name. This motion would allow the preparation for, and hearings related to, termination of parental rights as another purpose for which this information may be disclosed and would allow the records to also be disclosed to DCF or a licensed child welfare agency under contract with DCF.

It should be noted that the provisions of this motion could be affected by the confidentiality requirements under the federal Health Insurance Portability and Accountability Act (HIPAA) of 1996.



State of Wisconsin
2013 - 2014 LEGISLATURE



LRBb02877?
GMM.....

In 5/31
NOTE

LFB:.....Swissdorf – Confidential exchange of child welfare and health care records

**FOR 2013-2015 BUDGET — NOT READY FOR INTRODUCTION
ASSEMBLY AMENDMENT ,
TO ASSEMBLY BILL 40**

1 At the locations indicated, amend the bill as follows:
2 1. Page 527, line 10: after that line insert:
3 "SECTION 939w. 48.78 (2) (b) of the statutes is amended to read:
4 48.78 (2) (b) Paragraph (a) does not apply to the confidential exchange of
5 information between an agency and another social welfare agency, a law
6 enforcement agency, a health care provider, as defined in s. 146.82 (1) (a) to (p), a
7 public school, or a private school regarding an individual in the care or legal custody
8 of the agency. A social welfare agency that obtains information under this paragraph
9 shall keep the information confidential as required under this section and s. 938.78.
10 A law enforcement agency that obtains information under this paragraph shall keep
11 the information confidential as required under ss. 48.396 (1) and 938.396 (1) (a). A

1

✓
1 health care provider that obtains information under this paragraph shall keep the
2 information confidential as provided under s. 146.82. ✓ A public school that obtains
3 information under this paragraph shall keep the information confidential as
4 required under s. 118.125, and a private school that obtains information under this
5 paragraph shall keep the information confidential in the same manner as is required
6 of a public school under s. 118.125. Paragraph (a) does not apply to the confidential
7 exchange of information between an agency and officials of a tribal school regarding
8 an individual in the care or legal custody of the agency if the agency determines that
9 enforceable protections are provided by a tribal school policy or tribal law that
10 requires tribal school officials to keep the information confidential in a manner at
11 least as stringent as is required of a public school official under s. 118.125.”

History: 1979 c. 34; 1981 c. 359; 1983 a. 471 s. 7; 1985 a. 29 s. 3202 (23); 1985 a. 176, 292, 332; 1987 a. 332; 1989 a. 31, 107, 336; 1991 a. 17, 39; 1993 a. 16, 92, 95, 218, 227, 377, 385, 395, 479, 491; 1995 a. 27 ss. 2610 to 2614p, 9126 (19); 1995 a. 77, 230, 352; 1997 a. 205, 207, 283, 292; 2001 a. 38, 69, 104, 109; 2005 a. 25, 293, 344, 406, 434; 2007 a. 20 ss. 1364, 9121 (6) (a); 2009 a. 79, 185, 302, 338; 2011 a. 32, 260, 270.

12 **2.** Page 531, line 5: after that line insert:

13 “**SECTION 945w.** 48.981 (7) (a) 3. of the statutes is amended to read:

14 48.981 (7) (a) 3. ~~An attending physician~~ A health care provider, as defined in
15 s. 146.82 (1) (a) to (p), for purposes of diagnosis and treatment.”

History: Sup. Ct. Order, 59 Wis. 2d R1, R3 (1973); 1977 c. 355; 1977 c. 447 s. 210; 1979 c. 300; 1983 a. 172, 190, 299, 538; 1985 a. 29 ss. 917 to 930m, 3200 (56); 1985 a. 176, 234; 1987 a. 27, 186, 209; 1987 a. 332 s. 64; 1987 a. 334, 355, 399, 403; 1989 a. 31, 41, 102, 316, 359; 1991 a. 160, 263; 1993 a. 16, 105, 218, 227, 230, 246, 272, 318, 395, 443, 446, 491; 1995 a. 275, 289, 369, 456; 1997 a. 27, 114, 292, 293; 1999 a. 9, 20, 32, 56, 84, 149, 192; 2001 a. 16, 38, 59, 69, 70, 103, 105; 2003 a. 33, 279, 321; 2005 a. 113, 232, 344, 406, 434; 2005 a. 443 s. 265; 2007 a. 20 ss. 1370 to 1373, 9121 (6) (a); 2007 a. 97; 2009 a. 28, 76, 78, 79, 94, 185; 2011 a. 32, 81, 87.

16 **3.** Page 621, line 24: after that line insert:

17 “**SECTION 1249q.** 51.30 (4) (b) 17. of the statutes is amended to read:

18 51.30 (4) (b) 17. To the elder–adult–at–risk agency designated under s. 46.90
19 (2) or other investigating agency under s. 46.90 for the purposes of s. 46.90 (4) and
20 (5), to the county department an agency, as defined in s. 48.02 (2g) 48.981 (1) (ag),
21 or the a sheriff or police department for the purposes of s. 48.981 (2) and (3), or to the
22 adult–at–risk agency designated under s. 55.043 (1d) for purposes of s. 55.043. The

1 treatment record holder may release treatment record information by initiating
2 contact with the elder-adult-at-risk agency, agency, as defined in s. 48.981 (1) (ag),
3 sheriff or police department, or adult-at-risk agency, or ~~county department~~, as
4 ~~defined in s. 48.02 (2g)~~, without first receiving a request for release of the treatment
5 record from the ~~elder-adult-at-risk agency~~, ~~adult-at-risk agency~~, or ~~county~~
6 ~~department~~.”.

History: 1975 c. 430; 1977 c. 26 s. 75; 1977 c. 61, 428; 1979 c. 110 s. 60 (1); 1983 a. 27, 292, 398, 538; 1985 a. 29, 176; 1985 a. 292 s. 3; 1985 a. 332 ss. 97, 98, 251 (1); 1987 a. 352, 355, 362, 367, 399, 403; 1989 a. 31, 334, 336; 1991 a. 39, 189; 1993 a. 196, 445, 479; 1995 a. 169, 440; 1997 a. 35, 231, 237, 283, 292; 1999 a. 32, 78, 79, 109; 2001 a. 16, 38; 2005 a. 25, 344, 387, 388, 406, 434; 2005 a. 443 s. 265; 2005 a. 444, 449, 485; 2007 a. 20 ss. 1817, 9121 (6) (a); 2007 a. 45, 97, 108; 2009 a. 28, 258.

7 **4. Page 862, line 13: after that line insert:**

8 “**SECTION 1900e.** 146.82 (2) (a) 11. of the statutes is amended to read:

9 146.82 (2) (a) 11. To ~~a county department~~ an agency, as defined under s. 48.02
10 (2g) in s. 48.981 (1) (ag), a sheriff or police department, or a district attorney for
11 purposes of investigation of threatened or suspected child abuse or neglect or
12 suspected unborn child abuse or for purposes of prosecution of alleged child abuse
13 or neglect, if the person conducting the investigation or prosecution identifies the
14 subject of the record by name. The health care provider may release information by
15 initiating contact with ~~a county department~~ an agency, sheriff or police department,
16 or district attorney without receiving a request for release of the information. A
17 person to whom a report or record is disclosed under this subdivision may not further
18 disclose it the report or record, except to the persons, for the purposes, and under the
19 conditions specified in s. 48.981 (7).

History: 1979 c. 221; 1983 a. 398; 1985 a. 29, 241, 332, 340; 1987 a. 40, 70, 127, 215, 233, 380, 399; 1989 a. 31, 102, 334, 336; 1991 a. 39; 1993 a. 16, 27, 445, 479; 1995 a. 98, 169, 417; 1997 a. 35, 114, 231, 272, 292, 305; 1999 a. 32, 78, 83, 114, 151; 2001 a. 38, 59, 69, 105; 2003 a. 281; 2005 a. 187, 344, 387, 388, 434; 2007 a. 20 s. 9121 (6) (a); 2007 a. 45, 106, 108, 130; 2009 a. 28, 276, 362; 2011 a. 32, 161.

20 **SECTION 1900f.** 146.82 (2) (a) 11m. of the statutes is created to read:

21 146.82 (2) (a) 11m. To a court conducting a termination of parental rights
22 proceeding under s. 48.42, to an agency, district attorney, corporation counsel or
23 other appropriate official under s. 48.09 performing official duties relating to such

1 a proceeding, or to the attorney or guardian ad litem for any party to such a
2 proceeding for purposes of conducting, preparing for, or performing official duties
3 relating to the proceeding, if that person identifies the subject of the record by name.
4 A person to whom a report or record is disclosed under this subdivision may not
5 further disclose the report or record, except for the purposes specified in this
6 subdivision.

7 **SECTION 1900h.** 146.82 (2) (a) 18m. of the statutes is amended to read:

8 146.82 (2) (a) 18m. If the subject of the patient health care records is a child
9 or juvenile who has been placed in a foster home, group home, residential care center
10 for children and youth, or juvenile correctional facility, including a placement under
11 s. 48.205, 48.21, 938.205, or 938.21, or for whom placement in a foster home, group
12 home, residential care center for children and youth, or juvenile correctional facility
13 is recommended under s. 48.33 (4), 48.425 (1) (g), 48.837 (4) (c), or 938.33 (3) or (4),
14 to an agency directed by a court to prepare a court report under s. 48.33 (1), 48.424
15 (4) (b), 48.425 (3), 48.831 (2), 48.837 (4) (c), or 938.33 (1), to an agency responsible for
16 preparing a court report under s. 48.365 (2g), 48.425 (1), 48.831 (2), 48.837 (4) (c), or
17 938.365 (2g), to an agency responsible for preparing a permanency plan under s.
18 48.355 (2e), 48.38, 48.43 (1) (c) or (5) (c), 48.63 (4) or (5) (c), 48.831 (4) (e), 938.355 (2e),
19 or 938.38 regarding the child or juvenile, to the foster parent of the child or juvenile
20 or the operator of the group home, residential care center for children and youth, or
21 juvenile correctional facility in which the child or juvenile is placed, or to an agency
22 that placed the child or juvenile or arranged for the placement of the child or juvenile
23 in any of those placements and, by any of those agencies, to any other of those
24 agencies and, by the agency that placed the child or juvenile or arranged for the
25 placement of the child or juvenile in any of those placements, to the foster parent of

the child or juvenile or the operator of the group home, residential care center for children and youth, or juvenile correctional facility in which the child or juvenile is placed, as provided in s. 48.371 or 938.371.”.

History: 1979 c. 221; 1983 a. 398; 1985 a. 29, 241, 332, 340; 1987 a. 40, 70, 127, 215, 233, 380, 399; 1989 a. 31, 102, 334, 336; 1991 a. 39; 1993 a. 16, 27, 445, 479; 1995 a. 98, 169, 417; 1997 a. 35, 114, 231, 272, 292, 305; 1999 a. 32, 78, 83, 114, 151; 2001 a. 38, 59, 69, 105; 2003 a. 281; 2005 a. 187, 344, 387, 388, 434; 2007 a. 20 s. 9121 (6) (a); 2007 a. 45, 106, 108, 130; 2009 a. 28, 276, 362; 2011 a. 32, 161.

5. Page 1003, line 9: after that line insert:

“**SECTION 2336f.** 938.78 (2) (b) 1. of the statutes is amended to read:

938.78 (2) (b) 1. Paragraph (a) does not apply to the confidential exchange of information between an agency and another social welfare agency, a law enforcement agency, the victim-witness coordinator, a fire investigator under s. 165.55 (15), a health care provider, as defined in s. 146.82(1) (a) to (p), a public school district or a private school regarding an individual in the care or legal custody of the agency. A social welfare agency that obtains information under this paragraph shall keep the information confidential as required under this section and s. 48.78. A law enforcement agency, victim-witness coordinator, or fire investigator, that obtains information under this paragraph shall keep the information confidential as required under ss. 48.396 (1) and 938.396 (1) (a). A health care provider that obtains information under this paragraph shall keep the information confidential as provided under s. 146.82. ^{plain} A public school that obtains information under this paragraph shall keep the information confidential as required under s. 118.125, and a private school that obtains information under this paragraph shall keep the information confidential in the same manner as is required of a public school under s. 118.125. Paragraph (a) does not apply to the confidential exchange of information between an agency and officials of a tribal school regarding an individual in the care or legal custody of the agency if the agency determines that enforceable protections are provided by a tribal school policy or tribal law that requires tribal school officials

- 1 to keep the information confidential in a manner at least as stringent as is required
- 2 of a public school official under s. 118.125.”.

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 230, 352; 1997 a. 205, 207, 283; 1999 a. 9; 2001 a. 38, 59, 109; 2003 a. 292, 321; 2005 a. 25, 277, 293, 344, 406, 434; 2007 a. 20 ss. 3834, 9121 (6) (a); 2007 a. 97; 2009 a. 79, 302, 338; 2011 a. 32, 270.

3

(END)

D-Note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb0287/1dn

GMM...

Date

Kim:

In construing the intent of the portion of the motion relating to disclosure of patient health records for purposes of a termination of parental rights (TPR) proceeding, I employed the canon of statutory interpretation known as the Golden Rule, which provides that when the plain meaning produces an absurd or unreasonable result, the court may construe the language so as to avoid the absurd or unreasonable result and to advance the result that was actually intended by the legislature. *Teschendorf v. State Farm Insurance Companies*, 2006 WI 89, par. 15, 293 Wis. 2d 123.

Specifically, the motion would require patient health care records to be released for purposes of a TPR proceeding not only to DCF or a county department, but also to a licensed child welfare agency under contract with DCF to conduct child abuse investigations or to a sheriff or police department. Release of health care records to such a child welfare agency or to a sheriff or police department for purposes of a TPR proceeding, however, produces an absurd or unreasonable result because such a child welfare agency, sheriff, or police department has nothing to do with a TPR proceeding.

I can see how the motion got drafted as it did in that s. 146.82 (2) (a) 11. permits health care records to be disclosed to a child welfare agency, sheriff, or police department for purposes of a child abuse investigation, which makes perfect sense, but it makes no sense to disclose those records to those entities for purposes of a TPR proceeding. ✓

Accordingly, instead of simply inserting a reference to TPR proceedings into s. 146.82 (2) (a) 11., which produces an absurd result, this draft creates s. 146.82 (2) (a) 11m. to accomplish the true intent of the motion, which is to permit the disclosure of health care records for purposes of a TPR proceeding to the persons who actually have something to do with a TPR proceeding, specifically, the juvenile court, the agency, the prosecutor, and the attorneys and guardians ad litem for the parties to the proceeding.

You might want to run this by the people at DCF, but I am pretty sure that what is set forth in the draft is what they actually intended.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: gordon.malaise@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb0287/1dn
GMM:kjf:rs

May 31, 2013

Kim:

In construing the intent of the portion of the motion relating to disclosure of patient health records for purposes of a termination of parental rights (TPR) proceeding, I employed the canon of statutory interpretation known as the Golden Rule, which provides that when the plain meaning produces an absurd or unreasonable result, the court may construe the language so as to avoid the absurd or unreasonable result and to advance the result that was actually intended by the legislature. *Teschendorf v. State Farm Insurance Companies*, 2006 WI 89, par. 15, 293 Wis. 2d 123.

Specifically, the motion would require patient health care records to be released for purposes of a TPR proceeding not only to DCF or a county department, but also to a licensed child welfare agency under contract with DCF to conduct child abuse investigations or to a sheriff or police department. Release of health care records to such a child welfare agency or to a sheriff or police department for purposes of a TPR proceeding, however, produces an absurd or unreasonable result because such a child welfare agency, sheriff, or police department has nothing to do with a TPR proceeding.

I can see how the motion got drafted as it did in that s. 146.82 (2) (a) 11. permits health care records to be disclosed to a child welfare agency, sheriff, or police department for purposes of a child abuse investigation, which makes perfect sense, but it makes no sense to disclose those records to those entities for purposes of a TPR proceeding.

Accordingly, instead of simply inserting a reference to TPR proceedings into s. 146.82 (2) (a) 11., which produces an absurd result, this draft creates s. 146.82 (2) (a) 11m. to accomplish the true intent of the motion, which is to permit the disclosure of health care records for purposes of a TPR proceeding to the persons who actually have something to do with a TPR proceeding, specifically, the juvenile court, the agency, the prosecutor, and the attorneys and guardians ad litem for the parties to the proceeding.

You might want to run this by the people at DCF, but I am pretty sure that what is set forth in the draft is what they actually intended.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: gordon.malaise@legis.wisconsin.gov

Malaise, Gordon

From: Swissdorf, Kim
Sent: Friday, June 07, 2013 1:30 PM
To: Malaise, Gordon
Subject: RE: LRB Draft: 13b0287/1 Confidential exchange of child welfare and health care records

Yup--I think so.

I think that's it for my drafts.

From: Malaise, Gordon
Sent: Friday, June 07, 2013 1:28 PM
To: Swissdorf, Kim
Subject: RE: LRB Draft: 13b0287/1 Confidential exchange of child welfare and health care records

So it sounds like they're OK with my interpretation of the intent behind disclosure of health care records for purposes of a TPR proceeding.

I'll go ahead and make the correction at page 5, line 14. I agree that the reference should be to s. 146.82.

From: Swissdorf, Kim
Sent: Friday, June 07, 2013 1:25 PM
To: Malaise, Gordon
Subject: FW: LRB Draft: 13b0287/1 Confidential exchange of child welfare and health care records

Well, I forwarded your draft to DCF last Friday, and here's what I got back today:

According to Sara, Legal counsel at DCF and DHS have signed off on the budget language. DHS legal counsel pointed out one needed correction:

On Pg 5, In 14 the reference should be to 146.82, not 146.81.

Let me know if you have any questions/comments. Thanks for your help!

Kim

From: Schlueter, Ron
Sent: Friday, May 31, 2013 5:12 PM
To: Swissdorf, Kim
Cc: Reinhardt, Rob; Hanaman, Cathlene; Holten, Vicki
Subject: LRB Draft: 13b0287/1 Confidential exchange of child welfare and health care records

Following is the PDF version of draft 13b0287/1.

<< File: 13b0287/1 >> << File: 13b0287/1dn >>



State of Wisconsin
2013 - 2014 LEGISLATURE

IN 6/7



LRBb0287/1 (L)
GMM:kjf:rs RMR

LFB:.....Swissdorf – Confidential exchange of child welfare and health care records

**FOR 2013-2015 BUDGET — NOT READY FOR INTRODUCTION
ASSEMBLY AMENDMENT ,
TO ASSEMBLY BILL 40**

✓

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 527, line 10: after that line insert:

3 “SECTION 939w. 48.78 (2) (b) of the statutes is amended to read:

4 48.78 (2) (b) Paragraph (a) does not apply to the confidential exchange of
5 information between an agency and another social welfare agency, a law
6 enforcement agency, a health care provider, as defined in s. 146.81 (1) (a) to (p), a
7 public school, or a private school regarding an individual in the care or legal custody
8 of the agency. A social welfare agency that obtains information under this paragraph
9 shall keep the information confidential as required under this section and s. 938.78.
10 A law enforcement agency that obtains information under this paragraph shall keep
11 the information confidential as required under ss. 48.396 (1) and 938.396 (1) (a). A

1 health care provider that obtains information under this paragraph shall keep the
2 information confidential as provided under s. 146.82. A public school that obtains
3 information under this paragraph shall keep the information confidential as
4 required under s. 118.125, and a private school that obtains information under this
5 paragraph shall keep the information confidential in the same manner as is required
6 of a public school under s. 118.125. Paragraph (a) does not apply to the confidential
7 exchange of information between an agency and officials of a tribal school regarding
8 an individual in the care or legal custody of the agency if the agency determines that
9 enforceable protections are provided by a tribal school policy or tribal law that
10 requires tribal school officials to keep the information confidential in a manner at
11 least as stringent as is required of a public school official under s. 118.125.”.

12 **2.** Page 531, line 5: after that line insert:

13 “**SECTION 945w.** 48.981 (7) (a) 3. of the statutes is amended to read:

14 48.981 (7) (a) 3. ~~An attending physician~~ A health care provider, as defined in
15 s. 146.81 (1) (a) to (p), for purposes of diagnosis and treatment.”.

16 **3.** Page 621, line 24: after that line insert:

17 “**SECTION 1234q.** 51.30 (4) (b) 17. of the statutes is amended to read:

18 51.30 (4) (b) 17. To the elder–adult–at–risk agency designated under s. 46.90
19 (2) or other investigating agency under s. 46.90 for the purposes of s. 46.90 (4) and
20 (5), to ~~the county department~~ an agency, as defined in s. 48.02 (2g) 48.981 (1) (ag),
21 ~~or the a~~ a sheriff or police department for the purposes of s. 48.981 (2) and (3), or to the
22 adult–at–risk agency designated under s. 55.043 (1d) for purposes of s. 55.043. The
23 treatment record holder may release treatment record information by initiating
24 contact with the elder–adult–at–risk agency, agency, as defined in s. 48.981 (1) (ag),

1 ~~sheriff or police department, or adult-at-risk agency, or county department, as~~
2 ~~defined in s. 48.02 (2g), without first receiving a request for release of the treatment~~
3 ~~record from the elder-adult-at-risk agency, adult-at-risk agency, or county~~
4 ~~department.”.~~

5 **4.** Page 862, line 13: after that line insert:

6 **“SECTION 1900e.** 146.82 (2) (a) 11. of the statutes is amended to read:

7 146.82 (2) (a) 11. To ~~a county department~~ an agency, as defined under s. 48.02
8 (2g) in s. 48.981 (1) (ag), a sheriff or police department, or a district attorney for
9 purposes of investigation of threatened or suspected child abuse or neglect or
10 suspected unborn child abuse or for purposes of prosecution of alleged child abuse
11 or neglect, if the person conducting the investigation or prosecution identifies the
12 subject of the record by name. The health care provider may release information by
13 initiating contact with ~~a county department~~ an agency, sheriff or police department,
14 or district attorney without receiving a request for release of the information. A
15 person to whom a report or record is disclosed under this subdivision may not further
16 disclose it the report or record, except to the persons, for the purposes, and under the
17 conditions specified in s. 48.981 (7).

18 **SECTION 1900f.** 146.82 (2) (a) 11m. of the statutes is created to read:

19 146.82 (2) (a) 11m. To a court conducting a termination of parental rights
20 proceeding under s. 48.42, to an agency, district attorney, corporation counsel or
21 other appropriate official under s. 48.09 performing official duties relating to such
22 a proceeding, or to the attorney or guardian ad litem for any party to such a
23 proceeding for purposes of conducting, preparing for, or performing official duties
24 relating to the proceeding, if that person identifies the subject of the record by name.

1 A person to whom a report or record is disclosed under this subdivision may not
2 further disclose the report or record, except for the purposes specified in this
3 subdivision.

4 **SECTION 1900h.** 146.82 (2) (a) 18m. of the statutes is amended to read:

5 146.82 (2) (a) 18m. If the subject of the patient health care records is a child
6 or juvenile who has been placed in a foster home, group home, residential care center
7 for children and youth, or juvenile correctional facility, including a placement under
8 s. 48.205, 48.21, 938.205, or 938.21, or for whom placement in a foster home, group
9 home, residential care center for children and youth, or juvenile correctional facility
10 is recommended under s. 48.33 (4), 48.425 (1) (g), 48.837 (4) (c), or 938.33 (3) or (4),
11 to an agency directed by a court to prepare a court report under s. 48.33 (1), 48.424
12 (4) (b), 48.425 (3), 48.831 (2), 48.837 (4) (c), or 938.33 (1), to an agency responsible for
13 preparing a court report under s. 48.365 (2g), 48.425 (1), 48.831 (2), 48.837 (4) (c), or
14 938.365 (2g), to an agency responsible for preparing a permanency plan under s.
15 48.355 (2e), 48.38, 48.43 (1) (c) or (5) (c), 48.63 (4) or (5) (c), 48.831 (4) (e), 938.355 (2e),
16 or 938.38 regarding the child or juvenile, to the foster parent of the child or juvenile
17 or the operator of the group home, residential care center for children and youth, or
18 juvenile correctional facility in which the child or juvenile is placed, or to an agency
19 that placed the child or juvenile or arranged for the placement of the child or juvenile
20 in any of those placements and, by any of those agencies, to any other of those
21 agencies and, by the agency that placed the child or juvenile or arranged for the
22 placement of the child or juvenile in any of those placements, to the foster parent of
23 the child or juvenile or the operator of the group home, residential care center for
24 children and youth, or juvenile correctional facility in which the child or juvenile is
25 placed, as provided in s. 48.371 or 938.371.”.

146.82 ✓

5. Page 1003, line 9: after that line insert:

“SECTION 2336f. 938.78 (2) (b) 1. of the statutes is amended to read:

938.78 (2) (b) 1. Paragraph (a) does not apply to the confidential exchange of information between an agency and another social welfare agency, a law enforcement agency, the victim–witness coordinator, a fire investigator under s. 165.55 (15), a health care provider, as defined in s. 146.81 (1) (a) to (p), a public school district or a private school regarding an individual in the care or legal custody of the agency. A social welfare agency that obtains information under this paragraph shall keep the information confidential as required under this section and s. 48.78. A law enforcement agency, victim–witness coordinator, or fire investigator, that obtains information under this paragraph shall keep the information confidential as required under ss. 48.396 (1) and 938.396 (1) (a). A health care provider that obtains information under this paragraph shall keep the information confidential as provided under s. 146.81. A public school that obtains information under this paragraph shall keep the information confidential as required under s. 118.125, and a private school that obtains information under this paragraph shall keep the information confidential in the same manner as is required of a public school under s. 118.125. Paragraph (a) does not apply to the confidential exchange of information between an agency and officials of a tribal school regarding an individual in the care or legal custody of the agency if the agency determines that enforceable protections are provided by a tribal school policy or tribal law that requires tribal school officials to keep the information confidential in a manner at least as stringent as is required of a public school official under s. 118.125.”.

(END)



State of Wisconsin
2013 - 2014 LEGISLATURE



LRBb0287/2
GMM:kjf:ph

LFB:.....Swissdorf – Confidential exchange of child welfare and health care records

**FOR 2013-2015 BUDGET -- NOT READY FOR INTRODUCTION
ASSEMBLY AMENDMENT ,
TO ASSEMBLY BILL 40**

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 527, line 10: after that line insert:

3 “SECTION 939w. 48.78 (2) (b) of the statutes is amended to read:

4 48.78 (2) (b) Paragraph (a) does not apply to the confidential exchange of
5 information between an agency and another social welfare agency, a law
6 enforcement agency, a health care provider, as defined in s. 146.81 (1) (a) to (p), a
7 public school, or a private school regarding an individual in the care or legal custody
8 of the agency. A social welfare agency that obtains information under this paragraph
9 shall keep the information confidential as required under this section and s. 938.78.
10 A law enforcement agency that obtains information under this paragraph shall keep
11 the information confidential as required under ss. 48.396 (1) and 938.396 (1) (a). A

1 health care provider that obtains information under this paragraph shall keep the
2 information confidential as provided under s. 146.82. A public school that obtains
3 information under this paragraph shall keep the information confidential as
4 required under s. 118.125, and a private school that obtains information under this
5 paragraph shall keep the information confidential in the same manner as is required
6 of a public school under s. 118.125. Paragraph (a) does not apply to the confidential
7 exchange of information between an agency and officials of a tribal school regarding
8 an individual in the care or legal custody of the agency if the agency determines that
9 enforceable protections are provided by a tribal school policy or tribal law that
10 requires tribal school officials to keep the information confidential in a manner at
11 least as stringent as is required of a public school official under s. 118.125.”.

12 **2.** Page 531, line 5: after that line insert:

13 “SECTION 945w. 48.981 (7) (a) 3. of the statutes is amended to read:

14 48.981 (7) (a) 3. ~~An attending physician~~ A health care provider, as defined in
15 s. 146.81 (1) (a) to (p), for purposes of diagnosis and treatment.”.

16 **3.** Page 621, line 24: after that line insert:

17 “SECTION 1234q. 51.30 (4) (b) 17. of the statutes is amended to read:

18 51.30 (4) (b) 17. To the elder–adult–at–risk agency designated under s. 46.90
19 (2) or other investigating agency under s. 46.90 for the purposes of s. 46.90 (4) and
20 (5), to ~~the county department~~ an agency, as defined in s. 48.02 (2g) ~~48.981 (1) (ag),~~
21 or ~~the a~~ a sheriff or police department for the purposes of s. 48.981 (2) and (3), or to the
22 adult–at–risk agency designated under s. 55.043 (1d) for purposes of s. 55.043. The
23 treatment record holder may release treatment record information by initiating
24 contact with the elder–adult–at–risk agency, agency, as defined in s. 48.981 (1) (ag),

1 ~~sheriff or police department, or adult-at-risk agency, or county department, as~~
2 ~~defined in s. 48.02 (2g), without first receiving a request for release of the treatment~~
3 ~~record from the elder-adult-at-risk agency, adult-at-risk agency, or county~~
4 ~~department.”.~~

5 **4.** Page 862, line 13: after that line insert:

6 **“SECTION 1900e.** 146.82 (2) (a) 11. of the statutes is amended to read:

7 146.82 (2) (a) 11. To ~~a county department~~ an agency, as defined under s. 48.02
8 (2g) in s. 48.981 (1) (ag), a sheriff or police department, or a district attorney for
9 purposes of investigation of threatened or suspected child abuse or neglect or
10 suspected unborn child abuse or for purposes of prosecution of alleged child abuse
11 or neglect, if the person conducting the investigation or prosecution identifies the
12 subject of the record by name. The health care provider may release information by
13 initiating contact with ~~a county department~~ an agency, sheriff or police department,
14 or district attorney without receiving a request for release of the information. A
15 person to whom a report or record is disclosed under this subdivision may not further
16 disclose it the report or record, except to the persons, for the purposes, and under the
17 conditions specified in s. 48.981 (7).

18 **SECTION 1900f.** 146.82 (2) (a) 11m. of the statutes is created to read:

19 146.82 (2) (a) 11m. To a court conducting a termination of parental rights
20 proceeding under s. 48.42, to an agency, district attorney, corporation counsel or
21 other appropriate official under s. 48.09 performing official duties relating to such
22 a proceeding, or to the attorney or guardian ad litem for any party to such a
23 proceeding for purposes of conducting, preparing for, or performing official duties
24 relating to the proceeding, if that person identifies the subject of the record by name.

1 A person to whom a report or record is disclosed under this subdivision may not
2 further disclose the report or record, except for the purposes specified in this
3 subdivision.

4 **SECTION 1900h.** 146.82 (2) (a) 18m. of the statutes is amended to read:

5 146.82 (2) (a) 18m. If the subject of the patient health care records is a child
6 or juvenile who has been placed in a foster home, group home, residential care center
7 for children and youth, or juvenile correctional facility, including a placement under
8 s. 48.205, 48.21, 938.205, or 938.21, or for whom placement in a foster home, group
9 home, residential care center for children and youth, or juvenile correctional facility
10 is recommended under s. 48.33 (4), 48.425 (1) (g), 48.837 (4) (c), or 938.33 (3) or (4),
11 to an agency directed by a court to prepare a court report under s. 48.33 (1), 48.424
12 (4) (b), 48.425 (3), 48.831 (2), 48.837 (4) (c), or 938.33 (1), to an agency responsible for
13 preparing a court report under s. 48.365 (2g), 48.425 (1), 48.831 (2), 48.837 (4) (c), or
14 938.365 (2g), to an agency responsible for preparing a permanency plan under s.
15 48.355 (2e), 48.38, 48.43 (1) (c) or (5) (c), 48.63 (4) or (5) (c), 48.831 (4) (e), 938.355 (2e),
16 or 938.38 regarding the child or juvenile, to the foster parent of the child or juvenile
17 or the operator of the group home, residential care center for children and youth, or
18 juvenile correctional facility in which the child or juvenile is placed, or to an agency
19 that placed the child or juvenile or arranged for the placement of the child or juvenile
20 in any of those placements and, by any of those agencies, to any other of those
21 agencies and, by the agency that placed the child or juvenile or arranged for the
22 placement of the child or juvenile in any of those placements, to the foster parent of
23 the child or juvenile or the operator of the group home, residential care center for
24 children and youth, or juvenile correctional facility in which the child or juvenile is
25 placed, as provided in s. 48.371 or 938.371.”.

1 **5.** Page 1003, line 9: after that line insert:

2 “**SECTION 2336f.** 938.78 (2) (b) 1. of the statutes is amended to read:

3 938.78 (2) (b) 1. Paragraph (a) does not apply to the confidential exchange of
4 information between an agency and another social welfare agency, a law
5 enforcement agency, the victim–witness coordinator, a fire investigator under s.
6 165.55 (15), a health care provider, as defined in s. 146.81 (1) (a) to (p), a public school
7 district or a private school regarding an individual in the care or legal custody of the
8 agency. A social welfare agency that obtains information under this paragraph shall
9 keep the information confidential as required under this section and s. 48.78. A law
10 enforcement agency, victim–witness coordinator, or fire investigator, that obtains
11 information under this paragraph shall keep the information confidential as
12 required under ss. 48.396 (1) and 938.396 (1) ~~(a)~~. A health care provider that obtains
13 information under this paragraph shall keep the information confidential as
14 provided under s. 146.82. A public school that obtains information under this
15 paragraph shall keep the information confidential as required under s. 118.125, and
16 a private school that obtains information under this paragraph shall keep the
17 information confidential in the same manner as is required of a public school under
18 s. 118.125. Paragraph (a) does not apply to the confidential exchange of information
19 between an agency and officials of a tribal school regarding an individual in the care
20 or legal custody of the agency if the agency determines that enforceable protections
21 are provided by a tribal school policy or tribal law that requires tribal school officials
22 to keep the information confidential in a manner at least as stringent as is required
23 of a public school official under s. 118.125.”.

24 **(END)**